

company, might, even after the inquisition of the jury had been ratified, have abandoned the route over the lands of the complainants, and thus freed themselves from any obligation to pay the valuation, still, as the company have not exercised this right, but have, on the contrary, taken possession of the land, excavated a part of it, and propose to cut their canal through the entire line, their obligation to pay the sum awarded by the jury, would seem to be incontestible. If the government had omitted in the case of this company, to provide for compensating the owners of property taken for the use of the canal, its officers and agents, upon application, would have been restrained by injunction. *Gardiner vs. Village of Newbury*, 2 *Johns. Ch. Rep.*, 162.

And having made provision for such compensation, and prescribing the mode, in which the amount to be paid shall be ascertained, and the canal company, having, in pursuance of the power conferred upon them, condemned and taken possession of the land of the complainants, nothing can be clearer, than the obligation to pay the money. The argument, that it would be unreasonable to require payment before the title passes, and, therefore, that such pre-payment could not have been intended by the legislature, does not seem to me applicable, because the payment and the passing of the title are simultaneous. The law says, "on payment thereof," (that is on payment of the sum awarded by the jury,) the company shall be seized. Some difference of opinion has been expressed by the courts, with respect to the period at which the compensation shall be paid, but the weight of authority, and as Chancellor Kent says, the better opinion is, that the compensation, or offer of it, must precede, or be concurrent with the seizure and entry upon private property under the authority of the state. 2 *Kent's Com.*, 340, *note*.

It is true, the 19th section of the charter of this company authorizes it to enter upon the lands of individuals, when required for the purposes of the canal, when the consent of the owners cannot be obtained, and to proceed to the execution of such works as may be requisite. "And, that the pendency of